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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/760,374	01/21/2004	Yuu Ishii	Q78752	9826
23373 7590 11/28/2007 SUGHRUE MION, PLLC 2100 PENNSYLVANIA AVENUE, N.W. SUITE 800 WASHINGTON, DC 20037			EXAMINER WOOD, KEVIN S	
			ART UNIT 2874	PAPER NUMBER
			MAIL DATE 11/28/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/760,374

Applicant(s)

ISHII ET AL.

Examiner

Kevin S. Wood

Art Unit

2874

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 June 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-22 is/are pending in the application.
- 4a) Of the above claim(s) 2-14 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1 and 15-22 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 18 June 2007 has been entered.

Withdrawal of Finality

2. Applicant's request for reconsideration of the finality of the rejection of the last Office action is persuasive and, therefore, the finality of that action is withdrawn. The 7 September 2007 was not proper and therefore it has been withdrawn.

3. The time period for response has been reset within this action.

Response to Amendment

4. The After Final Amendment filed on 17 May 2007 has been entered. Claim 1 has been amended. Claims 2-14 have been previously withdrawn from consideration. Claims 1-22 are pending in the application.

Response to Arguments

5. Applicant's arguments filed 17 May 2007 have been fully considered but they are not persuasive. The examiner has thoroughly reviewed the applicant's arguments, however the examiner firmly believes the cited references to reasonably and properly meet the claimed limitations.

6. The applicant's primary argument is that the combination of Pianciola et al. (U.S.P. No. 6,701,046 B1) and Donno et al. (US 2002/0136508 A1) does not disclose all the limitations of the claimed invention. Specifically the applicant argues that fail to disclose the fibers having a propagation constant difference there between of 1×10^{-4} rad/ μ m or smaller at a fusion elongating ratio in a range of 50% or less. The examiner respectfully disagrees with this argument. The applicant is arguing that a functional or property limitation is the difference between the cited prior art and the claimed invention.

When the structure recited in the reference is substantially identical to that of the claims, the claimed properties or functions are presumed to be inherent. See MPEP 2112.01. Since the cited references disclose a device that is substantially identical to the claimed invention, the claimed performance would be inherent.

Since the cited reference discloses a structure that is substantially identical to the structure of the claimed invention, the examiner can assume that the claimed functions are inherent.

The applicant must claim a structural difference that leads to the difference in performance, otherwise the examiner assumes that the prior art structures have the same performance.

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 1 and 15-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pianciola et al. U.S.P. No. 6,701,046 B1, and further in view of Donno et al. US 2002/0136508 A1.

Pianciola et al. U.S.P. No. 6,701,046 B1 teaches (Fig. 1; column 5, line 35 through column 6, line 8; claims) an optical fiber coupler comprising: a plurality of optical fibers including a λ_1 -band optical fiber and a λ_2 -band optical fiber, fused together at a fusion-elongated portion, wherein the two bands (λ_1 and λ_2) are different from one another, in which elongation is used during the fusion splicing of the fibers. Pianciola et al. '046 does not explicitly teach that the propagation constant difference between the optical fibers is 10^{-4} rad/ μm or smaller when these fibers happen to be at an elongation ratio in a range of 50% or less.

Donno et al. '508 teaches (ABS, [0036]-[0037], claims 1 and 4) an optical fiber coupler comprising: a plurality of optical fibers including a λ_1 -band optical fiber F1 and a λ_2 -band optical fiber F2, fused together at a fusion-elongated portion G, wherein the propagation constant difference between the optical fibers (F1 and F2) is 10^{-4} rad/ μm or smaller (see [0037]; claim 4). Since the propagation constant difference is 10^{-4} rad/ μm or smaller, it is inherent that, if the optical fibers were to be (emphasis added) fusion

elongated in a range of 50% or less, the propagation constant would still be less than 10^{-4} rad/ μm . There is no indication in the prior art that propagation constants would increase over the claimed threshold due to different elongation ratios.

Since Pianciola et al. '046 and Donno et al. '508 are both from the same field of endeavor, the purpose disclosed by Donno et al. '508 would have been recognized in the pertinent art of Pianciola et al. '046.

It would have been obvious at the time the invention was made to a person having ordinary skill in the art to use similar fibers to create a very low (and beneficial) propagation constant, as taught by Donno et al. '508 for the purpose of decreasing optical error in the very similar coupling arrangement of Pianciola et al. '046.

Regarding claims 15-22, Pianciola et al. '046 and Donno et al. '508 do not expressly disclose the particular conditions for the operating wavelength, radius of the cores/claddings, or relative refractive index difference between a multi-core fiber and its cladding. However, it would have been obvious to one having ordinary skill in the art at the time the invention was made to recognize the use of multi-core fibers, single mode fibers, and fibers having very low refractive index difference and/or low band ranges, since these further limitations are using different types of well known fibers in the art to couple optical signals into the coupling region of claim 1. It has been held that where the general conditions of claim (independent claim 1) are disclosed in the prior art, discovering the optimum or workable ranges (using particular fibers (multi-core or otherwise from claims 15 and 18)) involves only routine skill in the art. In re Aller, 105 USPQ 233. The use of these well known fibers in the art would have been recognized

as workable ranges or materials in view of the teaching of Pianciola et al. '046 and Donno et al. '508 in view of independent claim 1. It is noted that claims 15 and 18 are branching claims of independent claim 1, with claims 16, 17, and 19-22 further dependent upon these branching claims.

Conclusion

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kevin S. Wood whose telephone number is (571) 272-2364. The examiner can normally be reached on Monday-Thursday (7am - 5:30 pm).

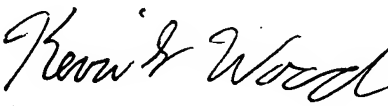
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rodney B. Bovernick can be reached on (571) 272-2344. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

KSW


KEVIN WOOD
PRIMARY PATENT EXAMINER